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Human rights bodies and mechanisms

Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability

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I. Introduction

1. In the light of the increasing concerns regarding the adverse impact of unilateral coercive measures on the enjoyment of human rights,[1] the Human Rights Council, in its resolution 19/32, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to organize a workshop to explore the issue of the relationship of unilateral coercive measures and human rights, including the various aspects of the negative impact of unilateral coercive measures on the enjoyment of human rights by the affected population, with the participation of States, academic experts and civil society representatives. The workshop, which was held in April 2013, examined the various issues and views relating to the issue, including the legitimacy of the said measures from the perspective of human rights. A number of conclusions and recommendations were submitted to the Council for its consideration, including a proposal that the Advisory Committee be tasked to conduct an overall review of independent mechanisms to assess the impact of unilateral coercive measures and to promote accountability.[2]

2. In its resolution 24/14, the Human Rights Council requested the Advisory Committee to prepare a research-based report containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability. The present progress report, to be presented to the Council at its twenty-eighth session, was prepared pursuant to that request. In resolution 24/14, the Council also requested the Advisory Committee to seek the views and inputs of Member States and relevant special procedures, national human rights institutions and non-governmental organizations during the preparation of the report. It requested OHCHR to organize a workshop on the impact of the application of unilateral coercive measures on the enjoyment of human rights by the affected populations, in particular the socioeconomic impact on women and children, in the States targeted, and to prepare a report on the proceedings of the workshop and to submit it to the Council at its twenty-seventh session. Pursuant to that request, a workshop was held on 23 May 2014 in Geneva and the proceedings of the workshop submitted to the Council at its twenty-seventh session.[3] The progress report has also greatly benefited from the outcomes of the workshop.

3. Pursuant to Human Rights Council recommendation 12/6, the Advisory Committee established a drafting group comprising Mikhail Lebedev, Obiora Chinedu Okafor, Ahmer Bilal Soofi, Jean Ziegler and Imeru Tamrat Yigezu. The drafting group elected Mr. Ziegler as Chairperson and Mr. Yigezu as its Rapporteur.[4] The Committee requested the drafting group to submit a draft progress report to the Committee at its thirteenth session, taking into account the replies to the questionnaire prepared during the twelfth session and subsequently circulated to Member States, relevant special procedures, national human rights institutions and non-governmental organizations.

4. Accordingly, the drafting group submitted a draft progress report to the Advisory Committee at its thirteenth session, in August 2014.[5] At the session, members of the Committee as well as States and non-governmental organizations provided useful

[1] See for example, General Assembly resolutions 66/156 and 67/170. See also A/65/199, A/66/138, A/67/181 and A/68/211.

[2] A/HRC/24/20, para. 31.

[3] See A/HRC/27/32.

[4] The members of the drafting group thank Herman Gill and Joanna Enns of the Osgoode Hall Law School, York University, Toronto, Canada, and Mohammed Mahmood Al Hinai for their valuable research input to the present study.

[5] A/HRC/AC/13/CRP.2.

comments and inputs on the draft report. In its decision 13/5 adopted at the session, the Committee took note of the draft progress report and requested the drafting group to recirculate the questionnaire prepared earlier in order to further seek the views and inputs of the various stakeholders so as to allow for more informed work. It furthermore requested the drafting group to finalize the draft progress report, taking into account the discussion held at its thirteenth session, and to submit it to the Human Rights Council at its twenty-eighth session.

5. As at November 2014, 12 States, one inter-governmental organization, one special procedure, three national human rights institutions and one non-governmental organization had responded to the questionnaire.[6]

II. Scope of the report

6. Pursuant to Human Rights Council resolution 24/14, the present report focuses on the adverse consequences of unilateral coercive measures on the enjoyment of human rights by the civilian population of targeted States and includes recommendations on the appropriate mechanism that may be used to assess the negative consequences of such measures and to promote accountability. The question of the legality of unilateral coercive measures, therefore, does not fall within the scope of the report. This issue has already been extensively examined in the thematic study of OHCHR on the impact of unilateral coercive measures on the enjoyment of human rights,[7] and was also a subject of discussion during the two workshops organized by OHCHR in April 2013 and in May 2014 at the request of the Council.[8]

III. Notion of unilateral coercive measures

7. The term "unilateral coercive measures" is a recent one. It has been used broadly to include measures such as "unilateral economic sanctions", "unilateral economic measures" and "coercive economic measures" in various studies on the subject, as well as in United Nations documents and resolutions. To date, the term "unilateral coercive measures" does not seem to have a commonly agreed-upon definition. Despite the intensive discussion that the term has triggered among scholars and within the different bodies of the United Nations in recent decades, the definition used for the term and, particularly the main elements to be used for describing the term, remain elusive in certain respects.

8. The most commonly used definition of the term is "the use of economic measures taken by one State to compel a change of policy of another State".[9] Some recent studies thereon, however, tend to hold the view that the term "unilateral" may be used in a broader sense to include States, group of States and "autonomous" regional organizations, unless

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[6] Belarus, Colombia, Cuba, Ecuador, Honduras, the Islamic Republic of Iran, Kuwait, Lebanon, Mexico, Qatar, the Syrian Arab Republic, and Trinidad and Tobago; the European Union; the Independent Expert on the promotion of a democratic and equitable international order; Defensoria Pueblo del Estado (Plurinational State of Bolivia), Conseil national des droits humains (Madagascar), and the National Human Rights Institution of Romania; and the Permanent Assembly for Human Rights.

[7] A/HRC/19/33.

[8] See presentations and statements made during the workshops available from the OHCHR webpage dedicated to the issue of human rights and unilateral coercive measures.

[9] See Andreas F. Lowenfeld, *International Economic Law* (Oxford, Oxford University Press, 2002), p. 698.

such measures are authorized under Chapter VII of the Charter of the United Nations.[10] In a recent article, one author stated that "…one can distinguish the unilateral sanctions practice of individual states and organizations – such as the EU, the US, Canada or Japan – from the mandatory sanctions of the [Security Council]".[11] This approach to defining unilateral coercive measures currently seems to have, more or less, gained support. Owing to the current increased use of what are referred to as "targeted" or "smart sanctions" employed by States against individuals, groups and/or entities believed to be in a position of power to influence or determine actions in targeted States, defining the term "unilateral coercive measures" should also consider taking these categories of persons or entities into account.

9. On the basis of the above considerations, the working definition of the term "unilateral coercive measures" preferred for the purposes of the present study is "the use of economic, trade or other measures taken by a State, group of States or international organizations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in targeted states to influence a course of action without the authorization of the Security Council".

10. Sanctions, including unilateral coercive measures employed by States, take different forms or a combination of measures, ranging from the restriction or disruption of trade, or financial and investment flows between sender and targeted countries to restrictions on social and cultural exchanges.[12] Most of these categories of sanctions, usually called traditional or comprehensive sanctions, involve coercive measures intended to impose economic pressure on targeted States by preventing them from importing or exporting certain goods and services deemed strategically important, or more specifically target banking and financial sectors of targeted States. "Targeted" or "smart sanctions" are regarded as new forms of coercive measures aimed at applying pressure to persons or entities thought to hold political decision-making power in targeted Governments or persons deemed to engage in terrorism or other forms of violence and whose behaviour is thought to be undesirable from the perspective of the sender State. These sanctions may comprise the freezing of assets or travel bans on individuals, groups or entities in targeted countries; they may also target particular commodities from being exported from targeted States or entering such States (such as diamonds or luxury goods, or arms embargoes).[13]

11. Different sanctions imply a different negative impact on human rights. The motivations for sanctions may vary significantly, and in some case are even used as a geopolitical weapon. It seems almost certain that reshaping local and global markets, destroying competitive economies, challenging sovereign credibility and leadership, endangering conciliatory talk, destabilizing Governments and transforming independent countries into failed States may induce a downturn in global economic growth. Such situations may in turn lead to negative consequences for the livelihood of disadvantaged populations in sanctioned countries, including in the country of origin of the sanctions.

12. Unilateral coercive measures that are comprehensive in nature are intended to cause economic and political hardship for targeted States; they therefore make no real distinction between States and the civilian population, including women and children and other marginalized groups, residing in targeted States, who bear the brunt of such severe

[10] See A/HRC/24/20, para. 11 and the presentation made by Antonios Tzanakopoulos, available on the OHCHR website dedicated to the issue of human rights and unilateral coercive measures.

[11] Clara Portela, "The EU's Use of 'Targeted' Sanctions: Evaluating Effectiveness", *EU Foreign Policy*, CEPS Working Document, No 391, 11 March 2014.

[12] For a more detailed description of sanctions, see E/CN.4/Sub.2/2000/33.

[13] See Bernard Sitt et al., *Sanctions and Weapons of Mass Destruction in International Relations* (Geneva, Geneva Centre for Security Policy, 2010).

economic hardship. Consequently, comprehensive unilateral coercive measures usually have an adverse impact on the enjoyment of human rights by the civilian population of targeted States, disproportionately affecting the poor and vulnerable groups in society, particularly in terms of access to food, health care and basic livelihood, contrary to the political declarations of the initiators and, as such, leading to or constituting the root cause of furthering the encroachment and limitation of and restrictions on numerous human rights and fundamental freedoms enshrined in universal instruments.

13. "Targeted sanctions" are, by contrast, designed to apply economic pressure to selected individuals or entities and may therefore not entail negative consequences for the enjoyment of human rights by the civilian population at large. This by no means implies that targeted sanctions do not give rise to violations of human rights of the individuals or entities targeted, particularly with regard to their civil and political rights.[14] Since comprehensive sanctions are the ones that usually have negative consequences on the enjoyment of human rights by the civilian population of targeted States, however, the present study focuses mainly on such measures.

IV. Negative impact of unilateral coercive measures on the enjoyment of human rights

14. In several resolutions and declarations adopted by United Nations entities human rights bodies, including the Commission on Human Rights, increasing concerns were expressed about the negative impact of sanctions, including unilateral coercive measures, on the enjoyment of human rights, particularly their negative impact on the human rights of the civilian population of targeted States and, even more so, on such vulnerable groups as women, children, older persons and minorities.[15] The Human Rights Council has followed this trend.[16]

15. There is general consensus that unilateral coercive measures, particularly those that are comprehensive in nature and manifested in the form of trade embargoes and restrictions on financial and investments flows between sender and target States, may have a serious impact on the enjoyment of human rights by the civilian population in targeted and non-targeted States alike. This is so because economic sanctions in general, including unilateral coercive measures, irrespective of their declared intent (such as preventing gross violations of human rights in targeted States), usually translate into a severe impact on the population at large, and in particular vulnerable groups in the society who become the true victims of such sanction rather than the States or Governments they are supposed to target.[17] In this regard, the Committee on Economic, Social and Cultural Rights, in its general comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights, declared that the inhabitants of a given country do not forfeit basic

[14] See Thomas Biersteker and Sue Eckert, "Addressing Challenges to Targeted Sanctions: An Update of the 'Watson Report'", Watson Institute, Geneva, 2009, and Bardo, Fassbender, "Targeted Sanctions and Due Process: The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter", study commissioned by the United Nations Office of Legal Affairs, Office of the Legal Council. See also A/HRC/19/33, para. 27.

[15] See General Assembly resolutions 51/103, 52/120, 53/41, 54/172, 66/156, 67/170 and S-27/2, para. 30, and the World Summit Outcome (resolution 60/1), paras. 106 – 110; Subcommission on Human Rights resolution 2000/1; the Beijing Declaration and Platform for Action, para. 145; and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1997/35.

[16] Resolutions 15/24 and 24/14, and decision 18/120.

[17] See A/50/60-S/1995/1, para. 70.

economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security.[18] Although this comment seems to apply to sanctions adopted by the Security Council, it applies equally to unilateral coercive measures.

16. Several human rights obligations of States incorporated into the various core international human rights instruments provide limitations on unilateral coercive measures that have an impact on the enjoyment of human rights by the civilian population in targeted States. These include, inter alia, the right to life;[19] the right to an adequate standard of living, including food, clothing, housing and medical care;[20] and the right to health.[21] In this regard, the Vienna Declaration and Programme of Action called upon States:

> to refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services.[22]

17. Previous studies conducted at the request of the Subcommission on Human Rights and by the Human Rights Council already documented the likely negative impact of unilateral coercive measures on the civilian population of targeted and non-targeted States, and included case studies documenting the impact of such measures. These studies clearly indicated the likely and actual negative impact of unilateral coercive measures on the civilian population, particularly on vulnerable groups, including women, children, the infirm and older persons, as well as the poor, caused by the deprivation of access to basic services, such as life-saving equipment and medication, food, educational equipment and the loss of jobs. They also pointed out that long-term unilateral coercive measures have a more severe negative impact on the economic, social and cultural rights of the affected population enshrined in the core human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.[23]

18. In this regard, the presentations made during the workshops organized by OHCHR in April 2013 and May 2014 highlighted some of the negative effects of both multilateral and unilateral coercive measures on the enjoyment of human rights by the civilian population, particularly the disproportionate impact such measures have on women and children. One of the panellists stressed that the impact of unilateral coercive measures was more deeply felt by women and marginalized communities, and that women were the first to lose jobs, to be moved out of higher education, suffer from malnourishment and face food insecurity. He also gave specific relevant examples of the plight of women and children in the Islamic Republic of Iran and Cuba.[24] In several of the presentations made at

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[18] E/C.12/1997/8, para. 16.

[19] Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6, para. 1; Convention on the Rights of the Child, art. 6, para. 1.

[20] Universal Declaration of Human Rights, art. 25, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 11, para. 1; Convention on the Rights of the Child, art. 27, para. 1.

[21] International Covenant on Economic, Social and Cultural Rights, arts. 11, para. 2, and 12, para. 1.

[22] A/CONF.157/23, para. 31.

[23] See A/HRC/27/32. See also footnote 11.

[24] Anuradha M. Chenoy, presentation made at the workshop on the various aspects relating to the impact of the application of unilateral coercive measures on the enjoyment of human rights by the affected population in the States targeted, Geneva, 5 April 2013.

the workshop held in May 2014, the negative impact of both multilateral and unilateral coercive measures was unequivocally shown on the enjoyment of human rights in targeted and non-targeted States and, in particular, by women, children, minorities, older persons and persons with disabilities. Panellists cited examples of such impact in States such as Iraq, the Islamic Republic of Iran, the former Yugoslavia, Haiti and Myanmar.[25]

19. Almost all the responses to the question regarding the impact of unilateral coercive measures on the enjoyment of human rights underlined the fact that such measures often had a negative impact on the civilian population of targeted and non-targeted States and, in particular, on women, children, older persons and persons with disabilities. The examples given by the respondents with regard to the human rights affected by unilateral coercive measures included the rights to life, food, health, work and education, as well as to the right to development. They also pointed out that the negative impact of unilateral coercive measures on targeted States was compounded where such a State was, to a greater degree, economically dependent on the State that imposed the measure.

20. In several studies and reports, attention was drawn to the difficulty of assessing the impact of unilateral coercive measures, particularly those that are comprehensive in nature. They recommended a more robust and independent mechanism to assess and monitor the impact of such measures, including by promoting accountability in this regard.[26] Some of the reasons that give rise to this challenge are the restrictions on access to the target country in which sanctions are imposed, and the difficulty to distinguish the negative impact of unilateral coercive measures on the enjoyment of human rights by the affected population when such measures are imposed in conjunction with multilateral sanctions. When considering an appropriate mechanism for the assessment and monitoring of the negative impact of unilateral coercive measures on the enjoyment of human rights, it is hence essential to establish a body that, as far as possible, may have access to targeted States in which human rights are likely to be affected by such measures and with adequate expertise to undertake such a task.

V. Case studies

21. To date, few case studies on the impact of unilateral coercive measures on the enjoyment of human rights by the civilian population in targeted or non-target States have been available. The case studies below, which are well documented, serve to highlight some of the main adverse effects of unilateral coercive measures on the enjoyment of human rights in target and non-targeted States.

A. Cuba

22. The economic sanctions on Cuba were initially imposed by the United States of America in the 1960s, and were subsequently amended by the Cuban Democracy Act of

[25] See in particular the presentations made by Haifa Zangana, Dursun Peksen and Sarah Zaidi at the workshop on the application of unilateral coercive measures on the enjoyment of human rights by the affected population, in particular their socioeconomic impact on women and children in States targeted, Geneva, 23 May 2014.

[26] See Gary Haufbauer, Jeffrey Schott and Kimberly Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd ed. (Washington, D.C., Peterson Institute, 1990), pp. 32–33; and Richard Garfield, "The Impact of Economic Sanctions on Health and Well-being", Relief and Rehabilitation Network Paper, Overseas Development Institute, London, 1999.

1992 and the Helms-Burton Act of 1996, as well as other legislative and executive acts. These acts essentially impose an economic, commercial and financial embargo on Cuba.[27]

23. In the United States, Congress passed the Trade Sanctions Reform and Export Enhancement Act in October 2000. The Act eased somewhat the enforcement of the embargo and allowed the sale of agricultural goods and medicine to Cuba for humanitarian reasons. From 2005 onwards, exports to Cuba were required to be on a cash-in-advance basis, with full payment made before the products were shipped to Cuba; transactions had to be made through banks in a third country. In 2009, the Government of the United States eased the restrictions by allowing the Government of Cuba to pay for food and agricultural products after the shipment was made.[28]

24. The embargo of the United States on medicines and technologies in Cuba has led to limitations of the enjoyment of human rights by citizens in Cuba. Amnesty International has shown, on the basis several fact-finding reports, that the embargo had contributed to malnutrition that mainly affected women and children, poor water supply and lack of medicine.[29] The United Nations High Commissioner for Human Rights described the effect of the embargo on Cuban people as "disastrous".[30] According to the American Association for World Health, which conducted a detailed health survey in Cuba, the embargo on food and the de facto embargo on medical supplies had wreaked havoc with the island's model primary health-care system.[31]

25. According to the United Nations Children's Fund (UNICEF), Cuba is unable to import nutritional products intended for children and for consumption in schools, hospitals and day-care centres.[32] In addition, food shortages are linked to a devastating outbreak of neuropathy numbering in the tens of thousands. By one estimate, daily caloric intake dropped by 33 per cent between 1989 and 1993.[33]

26. The embargo also restricts the State's access to water treatment chemicals and spare parts for the island's water supply system. This has led to serious cutbacks in the supply of safe drinking water, which in turn has become a factor in the rising incidence of morbidity and mortality rates due to water-borne diseases.

27. Access to essential medicines and equipment has also been affected by the sanctions. Of the 1,297 medications still available in Cuba in 1991, physicians now have access to only 889, and many only occasionally. Because most major new drugs are developed by United States pharmaceutical companies, Cuban physicians have access to less than 50 per cent of the new medicines available on the world market. Owing to the direct or indirect effects of the embargo, the most routine medical supplies are in short supply or entirely absent from some Cuban clinics.[34] In the case of patients with psychiatric disorders,

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[27] For more details on economic sanctions imposed by the United States of America on Cuba, see Benhamin Manchak, "Comprehensive economic sanctions, the right to development, and constitutionally impermissible violations of international law", *Boston College of Third World Law Journal*, vol. 30, No. 2 (2010), pp. 421–424.

[28] Amnesty International, The US Embargo against Cuba: Its Impact on Economic and Social Rights, 2009.

[29] Ibid.

[30] A/HRC/4/12, para. 7.

[31] American Association for World Health, The Impact of the U.S. Embargo on Health and Nutrition in Cuba, March 1997, p.16.

[32] Ibid.

[33] Maria C. Werlau, "The Effects of the U.S. Embargo on Health and Nutrition in Cuba: A Critical Analysis", *Cuba in Transition*, 1998.

[34] Ibid.

advanced drugs are also not available. The embargo imposed against Cuba not only affects the supply of medicine. Health services depend on functioning water and sanitation infrastructure, electricity and other equipment, such as X-ray equipment and refrigerators to store vaccines. The embargo has also slowed down the renovation of hospitals, clinics and care centres for older persons.[35]

28. According to the Government, the State is forced to pay above-market prices and tariffs on goods purchased and shipped from distant markets, while the blockade imposes difficult terms on credit and trade and blocks access to many goods and technologies. It is estimated that the embargo on Cuba creates a virtual tax of 30 per cent on all imports.[36]

B. Zimbabwe

29. The European Union imposed sanctions on Zimbabwean leaders in 2002. The sanctions include, inter alia, targeted sanctions in the form of a travel ban and asset freeze on members of the Government and persons and entities associated with it. The motivation of the sanctions had its origins in the agrarian reform begun by President Mugabe in 2000/01, which entailed the expropriation of land from white farmers, and which was accompanied by a wave of political violence and the intimidation of the opposition.[37]

30. The country's population of 13 million people has suffered from the sanctions. Poverty and unemployment rates are high, while infrastructure is sorely lacking. Diseases such as HIV/AIDS, typhoid and malaria give the country an average life expectancy of between 53 to 55 years. The country is rich in minerals, but this has been translated into neither sustainable economic growth nor prosperity for its people.

31. In a report published in 2010, UNICEF found that some 34 per cent of children under 5 were underdeveloped, 2 per cent were stunted and 10 per cent underweight. Zimbabwe has one of the highest rates of orphaned children in the world (25 per cent of all children), and experience of violence and abuse is widespread. At least 21 per cent of the first sexual encounter experienced by girls is forced, and the perception that family violence is acceptable is shared by both women and men (48 and 37 per cent, respectively). Corporal punishment is legally administered. Two-thirds of children report experiencing such punishment at school. The combination of poverty, neglect and violence contributes to the large number of children on the move, resulting in unsafe migration and child exploitation.[38]

C Islamic Republic of Iran

32. Acting through the Security Council and regional or national authorities, the United States of America, the States members of the European Union, Japan, the Republic of Korea, Canada, Australia, Norway, Switzerland and others have put in place a strong interlocking matrix of sanctions and measures relating to the nuclear, missile, energy, shipping, transportation and financial sectors of the Islamic Republic of Iran.

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[35] Amnesty International, The US Embargo against Cuba (see footnote 28).

[36] Richard Garfield and Arah Santana, "The Impact of the Economic Crisis and US Embargo on Health in Cuba", *American Journal of Public Health*, vol. 87, No.1 (January 1997), pp. 15–20.

[37] C. Portela, "The EU's Use of 'Targeted' Sanctions" (see footnote 11).

[38] UNICEF Annual Report for Zimbabwe, available from www.unicef.org/zimbabwe/Zimbabwe2010_Annual_Report_Sept_2011.pdf.

33. According to a non-profit organization based in the United States, smart sanctions imposed on the banking, gas and insurance sectors have wreaked havoc with the lives of many Iranian citizens, as price hikes have led to the high cost of food (increases by 1,500 per cent in the period 2010–2012). Besides strengthening the black cash economy and increasing criminalization, women's access to higher education has decreased. Women are being pushed out of the job market. Furthermore, the sanctions have triggered a collapse in industry, skyrocketing inflation and massive unemployment. The country's middle class has disappeared, and even access to food and medicine has been compromised.[39]

34. Although the United States of America and the European Union claim that the sanctions do not apply to humanitarian items, in actual fact they have deeply affected the delivery and availability of medical supplies. The import of medicines containing antibiotics (of types not produced inside the country) has decreased by 20.7 per cent, and prices have increased by more than 300 per cent. The estimated 20,000 persons suffering from thalassemia in the country receive only a few days of their monthly medicinal needs. Survivors of chemical weapons used during the war with Iraq in the 1980s, in need of medicine and equipment, including cornea transplants and inhalers, similarly suffer from a shortage or lack of medical supplies. In general, the medicines used to treat haemophilia, cancer, thalassemia, multiple sclerosis and kidney transplant and dialysis are not produced domestically, and of those that are, most are not as effective as those imported from Europe and North America. The shortage of medicine for such chronic diseases often leads to the death of the patient. In addition, every year, 85,000 Iranians are diagnosed with some form of cancer; the facilities for providing them with chemotherapy and radiotherapy are however scant. While the financial sanctions imposed on the Islamic Republic of Iran do not, in principle, cover medicine and medical equipment, they make it almost impossible for Iranian importers to finance the import of medical equipment and medicine. In particular, depriving the country of SWIFT services has made international payments to Western companies almost impossible. As a result, Western pharmaceutical companies – often the sole producers of these medicines – have all but stopped exporting to the Islamic Republic of Iran, and every year tens of thousands of patients die as a result. The economic sanctions have therefore led to a deterioration in living conditions. Those living in poverty and in marginalized areas suffer most from the effect of the sanctions.[40]

35. According to the UNICEF annual report of 2012, the mortality rate of children under 5 years of age dropped from 36 to 22.52 per 1,000 live births between 2000 and 2010. Nonetheless, 20.3 out of 1,000 children die before their first birthday, and 15.29 during the first month of life – statistics that highlight the need to improve neonatal health care. The report also revealed that the average under-5 mortality rate in lower income regions is three times that of higher income regions.

36. Owing to the imposition of both multilateral and unilateral sanctions on the Islamic Republic of Iran, it is difficult to distinguish the specific impact that unilateral sanctions have had on the enjoyment of the human rights by the civilian population.

D. Gaza Strip

37. While according to international law the 1.7 million inhabitants of the Gaza Strip are under Israeli occupation, the Government of Israel treats this area as a foreign entity, submitting its inhabitants to a severe financial and economic blockade.

[39] International Civil Society Network, "What the Women Say: Killing Them Softly: the Stark Impact of Sanctions on the Lives of Ordinary Iranians", Brief 3, July 2012.

[40] Ibid.

38. During the 52 days of fighting in July and August 2014, Israeli bombs destroyed or severely damaged more than 53,000 houses in the Gaza Strip. The ongoing blockade violates the social, economic and cultural rights of the people suffering from the unilateral sanctions. Undernourishment is rampant, especially among children. Tens of thousands of families live in the ruins of their houses or in unheated containers furnished by the local authorities. In December 2014, the death from cold of a number of children under the age of 10 was reported to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

39. According to numerous reports of the United Nations and non-governmental organizations, the lack of clean drinking water in the Gaza Strip has caused kidney disease to spread, affecting severely the health of hundreds of thousands of people.

E. Impact of unilateral coercive measures on third States: the case of Pakistan

40. More recently, unilateral sanctions on the Islamic Republic of Iran, which have been revised and enforced over time, have negatively affected non-targeted neighbouring States, such as Pakistan, by blocking a gas pipeline project critical for Pakistan to overcome its grave energy crisis.[41] Industrial development in Pakistan has in fact been depressed since industries highly dependent on electricity and gas began to face supply shortfalls. The result has been a rising unemployment rate in a predominantly young population, with severe consequences for the economy and society, and most importantly the individuals affected. Moreover, endemic load-shedding across the country lasting up to 18 hours daily has led to violence in the form of frequent energy riots.[42] The energy crisis is thus hindering the progressive realization of the socioeconomic rights of the citizens of Pakistan in addition to compromising their rights to security of life and property.

41. To meet its energy shortages, the Government of Pakistan signed a multi-billion dollar agreement for the supply of 750 million cubic feet of gas per day, extendable to one billion cubic feet gas per day, through a pipeline from the Islamic Republic of Iran.[43] This would ease the gas deficit in the country to a reasonable level and help to curb rising inflation. The gas pipeline project, however, came to a halt as a direct consequence of the unilateral sanctions imposed by the United States of America on the Islamic Republic of Iran.[44] Failure to complete the project within the stipulated time frame would make Pakistan liable for $3 million a day in penalties. Significantly, a State already burdened with international and local loans could hardly afford such additional financial burdens.

42. Failure to complete the project would clearly have an adverse impact on the human rights of citizens of Pakistan, including, inter alia, their rights to life, food, health, development, education and employment, as well as national socioeconomic growth. These

[41] Ahmed Faraz Khan, "Power shortage leads to 12–18 hours of loadshedding", Dawn, 11 April 2014.

[42] See "Power riots: Wapda Complex attacked for loadshedding", *Express Tribune*, 9 April 2013, and "Another day of outrage at outages across Punjab", Dawn, 18 June 2012.

[43] Zafar Butta, "IPgas pipeline: Iran wants assurance that Pakistan is 'all in'", *Express Tribune*, 25 November 2013.

[44] Although under United States law the sanctions on the Islamic Republic of Iran have been in place for longer, the Iranian entity with whom the Inter-State Gas System of Pakistan entered into the gas purchase agreement was specifically sanctioned on 24 September 2012, that is, after Pakistan had signed the agreement. Thereafter, Pakistan has expressed reservations at the impact of sanctions on the project. See "Pakistan may face sanctions over gas pipeline with Iran: US", *Times of India*, 4 October 2013.

fundamental rights are guaranteed to the citizens of Pakistan by international treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

VI. Potential mechanisms to assess the negative impact of unilateral coercive measures and to promote accountability

43. In exploring the mechanisms that can be used to assess the negative impact of unilateral coercive measures and/or to mitigate their adverse impact on human rights, it is essential to point out from the outset that the possible mechanisms considered in the present study would, for obvious reasons, be focused on the relevant human rights bodies because of their greater and more specialized expertise in human rights. The human rights bodies were specifically established with the aim of promoting and protecting all human rights, as well to ensure that human rights obligations incorporated into international human rights instruments and those assumed by States are respected.

44. Accordingly, non-human rights oriented bodies, such as the World Trade Organization, are excluded from the scope of the present study since their mandate is not directly related to the promotion of human rights.[45] The General Assembly and the Security Council may be considered potential mechanisms for this purpose given that they have frequently dealt with the potential impact of sanctions on human rights, including unilateral coercive measures. However, neither body seems to be an appropriate mechanism, since they are more political and their experience to date reflects difficulties in balancing unilateral coercive measures with human rights.[46]

45. In general, United Nations human rights bodies may be categorized into two broad types: treaty-based bodies, on the one hand, and their Charter-based counterparts, on the other. The relevant treaty-based bodies include the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.[47] The Charter-based bodies include the Human Rights Council and its mechanisms and procedures, such as the universal periodic review mechanism, the complaint procedure and the special procedures.

46. Owing to the multiplicity of treaty-based and Charter-based human rights bodies and their different characteristics and mandates, it would be necessary to examine further some of the main considerations, challenges and opportunities that may be taken into account in identifying the most suitable candidate to take on the role of assessing the adverse impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability in this regard.

A. Challenge of territorially and jurisdictionally limited obligations

47. Given that unilateral coercive measures are imposed by one State on another or against persons of another State, one issue that arises is whether treaty-based bodies would

[45] See Tilahun Weldie Hindeya, "Unilateral trade sanctions as a means to combat human rights abuses: legal and factual appraisal", *Mizan Law Review*, vol. 7, No.1 (2013), pp. 108–116.

[46] See Sokol Braha, "The Changing Nature of U.S. Sanctions against Yugoslavia", *Michigan State University Journal of International Law*, No. 8 (1999), p. 273.

[47] See Philip Alston and Ryan Goodman, *International Human Rights* (New York, Oxford University Press, 2013), pp. 691–693.

be suitable as a mechanism of choice for assessing and/or promoting accountability with regard to unilateral coercive measures that adversely affect the enjoyment of human rights. Generally, the obligations assumed by State parties to almost all human rights treaties are framed in a rather narrow manner; for instance, State parties to the International Covenant on Civil and Political Rights undertake to ensure the enjoyment of all rights contained in the Covenant for all individuals and peoples within their territories or subject to their jurisdiction (art. 2). Articles 2 to 4 of the International Convention on the Elimination of All Forms of Racial Discrimination limit the obligations of State parties in a similarly narrow territorial and jurisdictional manner. The Convention on the Elimination of All Forms of Discrimination against Women (art. 2) and the Convention on the Rights of the Child (art. 2) follow the same pattern. Article 2 of the International Covenant on Economic, Social and Cultural Rights describes the obligations assumed by State parties in a more or less similar fashion, with the exception that the obligations to ensure the enjoyment of human rights by individuals within the territory of a State subject to its jurisdiction is modified by the obligation of the relevant States parties to engage in "international assistance and cooperation" towards the achievement of that goal. Whether or not a State is legally (as opposed to morally) obliged to help to ensure the enjoyment of socioeconomic and cultural rights in another State is, however, still a subject of controversy.[48]

48. The foregoing discussion tends to suggest that the territorial and jurisdictional mandates conferred to treaty-based bodies within their respective treaties is framed quite narrowly and does not seem to extend to victims of the adverse impact of unilateral coercive measures who usually do not reside within the territory or are subject to the jurisdiction of the State imposing the measures challenged. This begs the question as to how such treaty-based bodies could procedurally entertain petitions of individuals or groups who claim to have been victim of human rights violations when such persons are outside the territory or jurisdiction of the State against which they are bringing the complaint. It may be argued, however, that the obligations of State parties to ensure the enjoyment of human rights by all individuals and peoples within their territory or those subject to their jurisdiction could be read more flexibly in order to accommodate the ability of the relevant treaty-based bodies to entertain claims lodged against State parties by persons outside the territory of such States or normally regarded as being outside their jurisdiction.[49] In this instance, the phrase "within its jurisdiction", found in almost all of the treaties, may be interpreted to include any person against whom the State has taken measures, including unilateral measures, that may affect their human rights. Even such interpretive manoeuver is, however, subject to significant controversy.[50]

49. It should be noted, however, that a treaty body may require State parties to include in their periodic State reports information on how unilateral coercive measures that they have taken may have violated the human rights of persons who are outside their territory or jurisdiction, or on measures, if any, taken to assess or mitigate such adverse effects. Moreover, past experience has shown that treaty bodies have an indirect way of exercising their jurisdiction through the adoption of general comments. Even then, the issue of the territorial and jurisdictional limits of treaty bodies may pose a challenge.

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[48] With regard to the debate on the ways and means of ensuring the enjoyment of the right to development, see Obiora Chinedu Okafor, "A regional perspective: article 22 of the African Charter on Human and Peoples' Rights" in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (Geneva and New York, OHCHR, 2013), p. 373.

[49] See Hugh M. Kindred et al, *International Law: Chiefly as Interpreted and Applied in Canada*, 7th edition (Toronto, Emond Montgomery, 2006), pp. 431 and 547.

[50] Ibid.

50. What the above discussion shows is that, in the process of identifying appropriate mechanisms to assess and/or to promote accountability to mitigate the effects of unilateral coercive measures on the enjoyment of human rights, efforts should, at a minimum, be made to avoid, or at least to minimize, any potential controversy regarding the limits of the territorial and jurisdictional mandate of the treaty bodies. One obvious way of doing this would be to eschew the treaty bodies as the mechanism of choice for the task.

51. This would lead to the consideration of the Charter-based bodies as the more preferable mechanisms of choice to undertake the assessment and/or to promote accountability to mitigate the adverse impact of unilateral coercive measures on the enjoyment of human rights, since the mandates of these bodies are formulated in a more flexible manner. This stems from the fact that the Charter of the United Nations, the source from which the Charter-based bodies ultimately derive their mandates, calls for all States Members to pledge to take joint and separate action to achieve universal respect for, and observance of, human rights and fundamental freedoms for all without distinction to race, sex, language and religion (Arts. 55 and 56). The language used is clearly more flexible and better avoids potential controversy with regard to jurisdiction, which could be used to distract and even impede the assessment of unilateral coercive measures and their impact on the enjoyment of human rights.

B. The accountability imperative

52. The fact that States that impose unilateral coercive measures with an impact on the enjoyment of human rights of the civilian population of targeted or non-targeted States ought to be accountable in some way for their actions is a matter beyond debate. Indeed, the entire human rights system would be much weaker were accountability of one kind or another not one of its main goals, without which the entire human rights system would lose its rationale. For instance, in the area of addressing poverty reduction and the right to development, which has historically witnessed one of the largest accountability gaps in the broader field of human rights, the creation of institutions that ensure accountability has been deemed imperative. Indeed, the key documents that will shape the post-2015 development agenda have called for development efforts to be driven and shaped by building "accountable institutions for all,"[51] and further emphasized the need to establish "a participatory monitoring framework for tracking progress" and "mutual accountability mechanisms for all stakeholders".[52] According to a working paper prepared for the Commission on Human Rights, the full array of legal remedies should be available for victims of sanctions regimes at any point for the violation of international law, notably national courts, international or regional human rights bodies and the International Court of Justice.[53]

53. All United Nations human rights bodies, be they treaty-based or Charter-based, suffer to a similar degree from a lack of a supranational authority that can enforce their demands on States that have allegedly violated their human rights obligations.[54] All of these bodies exact accountability in a similarly "softer way", primarily through a slower, more

[51] See United Nations, A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development. Report of the High-level Panel of Eminent Persons on the Post-2015 Development Agenda (New York, 2013).

[52] A/68/202, para. 75.

[53] E/CN.4/Sub.2/2000/33, para. 106.

[54] See O.C. Okafor, *The African Human Rights System, Activist Forces and International Institutions* (Cambridge, Cambridge University Press, 2007), pp. 40–61.

consensual process of socialization, and sometimes, ostracization.[55] Rarely is a State punished for its human rights violations in the way that violations are sanctioned in the domestic legal system.[56]

54. Although the choice between a Charter-based or treaty-based mechanism is not clear-cut when considering accountability for unilateral coercive measures that have an adverse impact on the enjoyment of human rights, the universal periodic review may be better suited to ensuring accountability at the global level since it targets each and every State Member of the United Nations throughout each four-year cycle.

C. Access to independent evidence

55. Another important consideration when selecting the best-suited mechanisms for the assessment and/or mitigation of the adverse effects of unilateral coercive measures on the enjoyment of human rights is the extent to which that body would have access to robust or direct independent evidence. The special procedures of the Human Rights Council do in fact enjoy such an advantage over other mechanisms, since they are often able to undertake on-site visits to the relevant States and territories.

D. Consideration of financial and administrative efficiency

56. The United Nations system is currently striving to be as financially and administratively efficient and cost-effective as possible without significantly cutting down its relevant programmes. This consideration suggests that a multiplicity of mechanisms to take on the task of assessing and promoting accountability for the negative impact of unilateral coercive measures should be avoided. A single Charter-based or treaty-based body ought therefore to be considered the mechanism of choice for the task at hand.

E. Need to secure the most appropriate expertise

57. Given the fact that unilateral coercive measures of a comprehensive nature are more likely to have an adverse impact on the enjoyment of economic and social rights, especially in relation to women, children and other vulnerable groups in targeted States (also emphasized by the Human Rights Council in its resolution 24/14), the mechanism of choice may need to be a body or a person with the requisite expertise in the area of economic and social rights. In the context of treaty-based bodies, this would point to three specific bodies that could perform the task jointly, namely, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. Financial and administrative considerations might, however, militate against this more cumbersome route, where multiple mechanisms would be involved in looking at the adverse impact of unilateral coercive measures on human rights. This would once again suggest a Charter-based option, such as the appointment of a special procedure by the Human Rights Council. The selection process of the appropriate mandate holder would moreover provide the Council with more flexibility when identifying the person it considers best suited for the position, with adequate expertise in the areas identified.

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[55] Ibid. See also Ryan Goodman and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law", *Duke Law Journal*, vol. 54, 2004, p. 7.

[56] Ibid.

F. Minimizing politicization

58. The issue of the imposition of unilateral coercive measures is directly tied to global politics and the challenge that is posed to the multilateral ideal by the actions of many States.[57] For the mechanism eventually selected to perform the task to gain the most popular legitimacy and effectiveness, preference should be given to one that has the potential to minimize the politicization of the issue. With a few exceptions, both treaty-based and Charter-based bodies are designed to be as non-political as possible and therefore do not enjoy any specific advantage in this respect.

VII. Concluding remarks and recommended actions

59. **The fact that unilateral coercive measures are likely to have a negative impact on the enjoyment of human rights by the civilian population of targeted and, in some cases, non-targeted States does not seem to be a matter of controversy. However, assessing the impact of unilateral coercive measures on the human rights of the civilian population, and more particularly, on vulnerable groups, such as women and children, would require on-site visits to the States affected by such measures to verify, in an independent manner, the actual effects of such measures on the different segments of the population.**

60. **One obvious conclusion of the discussions above is that this function should squarely rest on one of the relevant human rights mechanisms, namely, either a treaty-based or a Charter-based mechanism. The challenge faced by treaty-based bodies in discharging this function is the narrow territorial and jurisdictional manner in which the obligations of States are framed in the relevant treaties. For this reason, Charter-based bodies, which tend to have a more flexible mandate, are to be preferred for the task.**

61. **Almost all of the factors considered for selecting the most appropriate mechanism for the assessment of the adverse effect of unilateral coercive measures on the enjoyment of human rights seem to lead to the conclusion that a special procedure should be established to undertake the task. The need for the selected mechanism to have as much direct access as possible to robust and independent evidence, to align with the United Nations administrative and financial efficiency goals, and to have a great degree of flexibility to select and deploy the most appropriate technical expertise in the area would indeed tend to point to the creation of a special procedures mandate by the Human Rights Council.**

62. **Almost all of the stakeholders who responded to the questionnaire were also of the view that the most appropriate mechanism for assessing the negative impact of unilateral coercive measures on the enjoyment of human rights should be a special procedure mandate, although some stated that the establishment of a world court on human rights might be more appropriate. The European Union did not consider the Human Rights Council to be the appropriate forum for addressing the issue.**

63. **With regard to the promotion of accountability for the negative impact of unilateral coercive measures on the enjoyment of human rights, the most appropriate**

[57] See Christine Chinkin, "The State that acts alone: bully, good Samaritan or iconoclast?", *European Journal of International Law*, vol. 11, No. 1 (2000), p. 31; and Alberto R. Coll, "Harming human rights in the name of promoting them: the case of the Cuban embargo", *UCLA Journal of International Law and Foreign Affairs*, vol. 12, No. 2 (2007), p. 199.

means to hold States to account would seem to be the use of the universal periodic review mechanism and for the relevant treaty-based bodies to require Member States to address the issue in their periodic reports so as to raise public awareness to pressure States to prevent or, at least, to mitigate the impact of such measures on the enjoyment of human rights. There may also be a need for the Human Rights Council to consider developing specific rules, procedures and guidelines to ensure transparency and more accountability if and when States employ unilateral coercive measures that are likely to have a negative impact on the enjoyment of human rights in targeted or non-targeted States.

64. In this regard, the Human Rights Council, at its twenty-seventh session, in fact adopted resolution 27/21, in which it created, for a period of three years, a new mandate of Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, thus corroborating the findings of the present study. The Special Rapporteur has a mandate:

(a) To gather all information, wherever it may occur, including from Governments, non-government organizations and any other parties, relating to the negative impact of unilateral coercive measures on the enjoyment of human rights;

(b) To study trends, development and challenges in relation to the negative impact of unilateral coercive measures on the enjoyment of human rights and to make guidelines and recommendations on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights;

(c) To make an overall review of independent mechanisms to assess unilateral coercive measures to promote accountability;

(d) To contribute to strengthening the capacity of OHCHR to provide affected countries with technical assistance and advisory services to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights.

65. In discharging the mandate, the Council also requested the Special Rapporteur (a) to draw the attention of the Human Rights Council and the High Commissioner to situations and cases regarding the negative impact of unilateral coercive measures on the full enjoyment of human rights; and (b) to cooperate with other relevant United Nations bodies, including the High Commissioner, human rights treaty bodies, the special procedures and mechanisms, specialized agencies, fund and programmes, regional intergovernmental organizations and their mechanisms, with the aim to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights.

66. **The specific mandates and tasks assigned to the Special Rapporteur by the Human Rights Council in resolution 27/21 are consistent with what has already been recommended by the Advisory Committee in its progress report, and should therefore be commended. It is now important to ensure that all relevant United Nations human rights treaty bodies and subsidiary organs of the Council mainstream the issue of the negative impact of unilateral coercive measures on the enjoyment of human rights and perform specific monitoring activities, such as during the review of periodic reports submitted by States to such bodies and under the universal periodic review, and draw the attention of the Special Rapporteur to any potential or actual violation of human rights that may occur as a result of the application of unilateral coercive measures. Furthermore, it would also be necessary to develop quantitative and qualitative indicators that would allow a comparison between the situation of human rights in targeted and non-targeted States prior to and during the imposition of unilateral coercive measures.**